No. 50124-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

BRIAN GREEN,

Appellant,

v.

LEWIS COUNTY,

Respondents.

REPLY BRIEF OF APPELLANT

Joseph Thomas, #49532
Law Office of Joseph Thomas
PLLC
14625 SE 176th St., Apt. N101
Renton, Washington 98058
(206) 390-8848
joe@joethomas.org

TABLE OF AUTHORITIES

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I. ARGUMENT

A. Mr. Green is legally entitled to all costs and reasonable attorney's fees for vindicating the right to inspect or copy the requested record

1. Mr. Green Correctly Argued the Standard of Review as De Novo

The aggravating and mitigating factors of the statutory penalty has absolutely nothing to do with the extent a party prevailed. The trial court erred as a matter of law when it used aggravating and mitigating factors to determine the extent he prevailed. To compound the matter, the trial court used the incorrectly determined prevailing party status to then determine the amount of costs and attorney's fees to award. Because the trial court's discretion for the attorney fees was based upon an incorrect application of the law, this court review of this matter is de novo. *State v. Homan*, 330 P. 3d 182, 185 (Wash. 2014).

Here, the trial court used aggravating and mitigating factors as issues to determine to what extent Mr. Green prevailed. CP 191 at ¶ 14-17.

> Mr. Green prevailed in the sense that he obtained a wrongfully withheld record by filing this suit. However, this point was conceded at the outset of the litigation. Mr. Green did not prevail on his claim of bad faith or his other allegations, which made up the majority of the case. Therefore, the Court holds that Mr. Green prevailed on only 25% of this matter.

Id. at ¶ 15. Then the court used its determination to what extent Mr. Green prevailed, to calculate costs and attorney's fees. "Accordingly Mr. Green is awarded 25% of his costs and attorney's fees." *Id.* at 16.

Mr. Green prevailed upon the only issue in front of the court, Mr. Green prevailed on one-hundred percent of the issues. Because an award of reasonable attorney's fee is based upon the amount of time a reasonable lawyer would have spent on the successful issues, one-hundred percent of the reasonable attorney's fees should be awarded.

Because the issue of reasonable attorney's fees is predicated upon the pure legal question to what extent Mr. Green is the prevailing party, the standard of review is de novo. *Accord Sanders v. State*, 240 P. 3d 120, 140 (Wash. 2010) (stating "[w]hether to award costs and attorney fees is a legal issue reviewed de novo").

The record is absent of the trial court using its discretion when determining costs and attorney's fees. The record is absent of the trial court performing a lodestar calculation, let alone any adjustment the court made to attorney fees, other than to categorically deny seventy-five percent of all attorney's fees and costs. Lewis County's argument fails because the trial court did not make the determination in its discretion, but as a matter of law.

2. Mr. Green Only Claimed the Wrongful Withholding of the CERQ Violated the Public Records Act – Nothing Else

Mr. Green's cause of action, as stated in the Complaint, only states one issue – whether Lewis County wrongfully withheld the "Confidential Employment Reference Questionnaire" ("CERQ"). CP 187 at ¶ 8. In its Statement of the Case, Lewis County agreed that Mr. Green only presented one issue in the Complaint, the withholding of the CERQ. Resp't Br. at 3 (stating "Mr. Green sued Lewis County . . . claiming that an email responsive to his request was not provided").

Lewis County attempts to argue another issue is whether there is a political "quid pro quo" between the Public Records Officer and a legal journalist. Resp't Br. at 4, 7-8. This is a conclusory allegation without any basis in law or fact.

Washington State court rule CR 8(a) states that claims for relief must show how the pleader is entitled to relief and demand a judgment for that relief.

The plain language of Mr. Green's Complaint makes it clear he only asserted one cause of action – a public records act violation. The caption of the Complaint states "for a violation of the Public Records Act." CP at 4. The introduction states that it is an "action or the disclosure of public records." *Id*. The facts allege that Lewis County violated the Public Records

Act by failing to produce all responsive records. CP at 5. The cause of action states it is a Public Records Act claim. CP at 5-6. The request for relief seeks a ruling that Lewis County violated the Public Records Act. CP at 6.

There are no other issues presented in the Complaint. In fact, if other issues were also asserted by Mr. Green in the same Complaint as a Public Records Act violation, it would likely violate the local court rules. The Thurston County Local Court Rules have special procedures for lawsuits alleging a Public Records Act violation that would make it difficult, if not impossible to include other claims with Public Records Act claims. *See* Thurston County LCR 16(c) (stating the special procedure for Public Records Act cases).

Lewis County does not even attempt to explain how Mr. Green could have asserted another issue. Lewis County does not state where in Mr. Green's Complaint he plead any issue other than a violation of the Public Records Act. Lewis County does not state how the court rules would allow such a pleading. Lewis County is simply making an argument that does not have any basis in law or fact. Lewis County does not fulfill its burden on appeal by demonstrating what issues can be determined in a prevailing party status.

Because the trial court only looked at the merits of whether Lewis County violated the Public Records Act by wrongfully withholding a single document there was only one issue in front of the trial court. Thus, the trial court found Mr. Green prevailed on one-hundred percent (100%) of the issue pleaded in his Complaint. *See* CP at 189, ¶ 2 (stating "Lewis County violate the PRA by failing to provide the email and background questionnaire").

3. Lewis County Incorrectly States that Aggravators and Mitigators can be Used in a Prevailing Party Analysis

Lewis County and Mr. Green are in agreement for the legal standard to determine the extent a party prevailed in a Public Records Act lawsuit. In its Response Brief, Lewis County states the rule to determine what extent a party prevails is "whether the record should have been disclosed upon request." Resp't Br. at 7. This is in accordance with the legal standard that Mr. Green cited in his brief that Washington courts use to determine prevailing party status. Appellant Br. at 7 (stating a prevailing party status is a "legal question of whether the records should have been disclosed on request" *Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane*, 261 P. 3d 119, 131 (Wash. 2011) (quoting *Spokane Research Fund v. City of Spokane*, 117 P. 3d 1117, 1125 (Wash. 2005)); *Lindeman v. Kelso School District No. 458*, 172 P. 3d 329, 332 (Wash. 2007)).

Because Mr. Green and Lewis County agree upon the legal standard to be used to determine a prevailing party – "whether the record should have been disclosed upon request" – it is only left to argue what the issues are to determine the prevailing party status. *Sanders v. State*, 240 P. 3d 120, 140 (Wash. 2010).

Lewis County argues that aggravating and mitigating factors can determine a prevailing party status. Resp't Br. at 8 (stating "*Sanders* authorizes a trial court to consider litigation over the remedy. . . [in] its consideration in the penalty phase – when determining who prevailed"). Mr. Green will show in this argument that there is no basis in fact or law to support this argument.

But this is a fundamental misconstruction of what happened in *Sanders* and what the court held. Justice Sanders argued the Public Records Act was violated in multiple ways. One of the ways he argued it was violated was through "free-standing violation" of an insufficient explanation of redactions and withholdings, violating RCW 42.56.210(3). *Sanders v. State*, 240 P. 3d 120, 137 (Wash. 2010). The *Sanders* court concluded "the right to inspect or copy turns on whether the document is actually exempt from disclosure, not whether the response contained a brief explanation of the claimed exemptions." *Id.* The *Sanders* court explained, because an insufficient explanation in a withholding/redaction log itself.

Unlike in *Sanders,* Mr. Green only claimed one violation of the Public Records Act – the wrongful withholding of the CERQ document. CP 187 at ¶ 8; Resp't Br. at 3 (stating "Mr. Green sued Lewis County. . . claiming that an email responsive to his request was not provided"). Further unlike *Sanders*, Mr. Green did not claim a free-standing violation, but Mr. Green claimed Lewis County wrongfully withheld a record, implicating RCW 42.56.550(4). CP 5-6. By their own admission in the Answer, Lewis County affirmatively states that Mr. Green is not claiming a free-standing violation, but a statutory violation based upon Lewis County's wrongful withholding. CP at 45 (admitting Lewis County "violated the Public Records Act by failing to produce a responsive document"). Justice Sanders argued unpersuasively that an insufficient redaction log constituted a free-standing violation of the Public Records Act, because it is not mentioned anywhere in RCW 42.56.550. *Sanders v. State*, 240 P. 3d 120, 137 (Wash. 2010). In contrast, Mr. Green's contention of a wrongful withholding is mentioned in the plain language of RCW 42.56.550(1) and construed by the Washington State Supreme Court in RCW 42.56.550(4). *Id.* (stating the second sentence of RCW 42.56.550(4) "authorizes penalties only for denials of the right to inspect or copy") (internal quotation marks omitted).

There is nothing to compare between the two cases. Justice Sanders argued that an insufficiently detailed withholding/redaction log is a "free-

standing" violation. *Sanders v. State*, 240 P. 3d 120, 137 (Wash. 2010). The Washington State Supreme court disagreed saying that it should be used as an aggravator. There is nothing in the plain language of the *Sanders* opinion stating that the multifactor analysis used to determine statutory penalties is also used to decide the prevailing party status. Lewis County conjured this thought up from thin air and did not explain how the *Sanders* court applied the prevailing party status and aggravators at the same time.

4. Prevailing Party Status is a Condition Precedent to the Statutory Penalty (Aggravating and Mitigating Factors)

It is a legal non-sequitur for aggravating factors to be used in a determination of the extent a party prevailed. That is because a prevailing party determination is the first step, in a trial court's adjudication of a Public Records Act lawsuit. If, and only if, the trial court finds that the plaintiff (the party alleging a violation) prevailed on the merits of the case, then can the trial court perform the multifactor analysis of aggravating and mitigating factors to determine the agency's liability in the form of the statutory penalty. In other words, it is a condition precedent for the trial court to determine the plaintiff is a prevailing party, before moving on to determine the multifactor analysis of aggravating and mitigating factors.

The Washington State Supreme Court instructs that a finding wrongfully withheld public records is a "condition precedent to imposing a

penalty" in RCW 42.56.550(4). *Yousoufian v. Office of Ron Sims*, 98 P, 3d 463, 474 (Wash. 2004) ("*Yousoufian I*") (construing former RCW 42.17.340(4) and recodified as RCW 42.56.550(4)). The *Yousoufian I* court explains RCW 42.56.550(4) "requires a penalty for each day the agency wrongfully denies the requesting litigant said public record." *Yousoufian I,* 98 P. 3d at 474 (internal quotation marks omitted).

The determination to what extent a party prevailed in proving a wrongful withholding of documents creates a condition precedent for costs and attorney's fees. "[D]isclosure is a necessary prerequisite for attorney fees in a PRA case." *City of Lakewood v. Koenig,* 250 P. 3d 113, 120 (Wash. Ct. App. 2011). The term necessary prerequisite is different from condition precedent, but in this case, it means the same thing. Before attorney fees are awarded, a wrongful withholding of public records must be proved.

5. In the Alternative the Trial Court Abused its Discretion by Not Taking an Active Role in Determining Attorney's Fees

The trial court impermissibly determined attorney's fees as an afterthought in the litigation. Violating established case law, the Trial Court took a passive role in determining attorney's fees. Without providing any law or authority to justify its decision, the Trial Court arbitrarily based the attorney's fees off the prevailing party status.

"Courts must take an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought." *Mahler v. Szucs*, 957 P. 2d 632, 651 (Wash. 1998).

Lewis County's Brief to this Court argues that the standard should be an abuse of discretion. The brief fails to explain how the Trial Court exercised any discretion when determining attorney's fees and costs. If the Trial Court had used its discretion, it most likely would have actively participated in the fee award. However, the trial court was passive in determining the fee award, in violation of case law.

There is no evidence in the record that the Trial Court did not perform a lodestar analysis to determine a fee award. There is no evidence in the record that the Trial Court even looked at Plaintiff's attorney, Mr. Thomas', billable hours, to determine which issues he participated in.

6. Trial Court Did Not Base Attorney's Fees on Successful Issues

Even if this Court uses Lewis County's legal standard, their argument still fails. Lewis County argue that Mr. Green should only receive attorney fees for issues he successfully argues. *See e.g.* Resp't Br. at 11 (stating "it would be an abuse of discretion for the trial court not to discount Mr. Green's fees for his unsuccessful claims regarding the remedy").

However, Lewis County is being intellectually dishonest with this characterization. Mr. Green was pro se throughout the vast majority of the lawsuit and the attorney, Mr. Thomas only represented Mr. Green for the Reply PRA Brief and the PRA Penalty Hearing. *See* CP 62-80 (where Mr. Green filed the initial Motion for Penalties and Costs on Nov. 18, 2016); *c.f.* CP 171-85 (where Mr. Thomas signed and filed Plaintiff's Reply to Defendant's Brief for PRA Hearing on December 12, 2016).

Because Mr. Thomas started representing Mr. Green halfway through the briefing for the penalty hearing, Mr. Thomas did not participate in the "bad faith or other allegations, which made up the majority of the case.

In fact, on the day of the trial both attorneys, Mr. Thomas and Mr. Eisenberg, entered in to a stipulated CR 2(a) agreement stating that there was not enough evidence to substantiate the "quid pro quo" allegation, and that Mr. Green would drop that issue from the penalty phase. CP at 189, ¶ 17. The reason was to focus on the aggravating factors Mr. Green felt he had a better chance winning.

Because Mr. Thomas was not involved in the case until the very end, he could not have participated in the issues the court felt Mr. Green lost on and thus penalized Mr. Thomas by untenably withholding seventy-five (75) percent of the attorney's fees.

To allow a court to withhold seventy-five (75) percent of the attorney's fees without a valid reason, as here, would have a chilling effect any individual seeking to hire an attorney for a Public Records Act case.

7. Conclusion

The Trial Court did not follow clearly established case law when determining the prevailing party standard, which then led the Trial Court to untenably withhold seventy-five (75) percent of Mr. Green's costs and attorney's fees from Mr. Green and his attorney.

Furthermore, even if this court agrees with Lewis County's arguments about the state of the law, it is still an untenable withhold of Mr. Green's attorney's fees because Mr. Green's attorney only joined the case at a very late stage and did not participate in the issues the Trial Court ruled that Mr. Green lost. Because Mr. Thomas was not the attorney of record when those issues were litigated, Mr. Thomas' attorney fees should not be penalized.

This Court should find that Mr. Green is entitled to one-hundred (100) percent of costs and Mr. Thomas is entitled to one-hundred (100) percent of the attorney's fees. This Court should remand the case back down to the trial court to determine all costs and reasonable attorney's fees.

B. The Trial Court cannot simultaneously apply the same aggravating factor as a mitigating facotr

Mr. Green is asking this Court to hold that trial courts cannot use the same issue as both an aggravating factor and a mitigating factor simultaneously during a *Yousoufian* analysis, in the penalty phase. *Yousoufian v. Office of Ron Sims*, 229 P. 3d 735, 747-48 (Wash. 2010). This is a novel issue that has not yet been addressed by Washington State Courts.

At issue in this case, the trial court used the same issue of – a timely response – as both an aggravator and a mitigatory in the *Yousoufian* analysis, in the penalty phase. First, the trial court found as an aggravating factor there was a delayed response by the agency of one year in providing Mr. Green the records. CP at 189, ¶ 8(i). Then later, the trial court also found that the agency promptly responded. CP at 190, ¶ 9(ii).

Mr. Green is asking this Court to create a rule, as a matter of law, that aggravating factors cannot be used simultaneously as mitigating factors, as the trial court did with Mr. Green.

Lewis County agrees in its Response Brief that the trial court used the same issue as both an aggravating and mitigating factor. "[T]he trial court concluded that the response was delayed by a year (an aggravating factor), but that the agency promptly responded (a mitigating factor)." Resp't Br. at 11. The difference between Lewis County and Mr. Green is

that Lewis County believes this is perfectly acceptable arguing that this does not violate an abuse of discretion. *Id.*

1. Intent and Spirit of Aggravating and Mitigating Factors Supports De Novo Review

This issue involves no discretion because it is a pure legal issue. Mr. Green is not questioning the trial court's reasoning. Mr. Green is not arguing about the facts and circumstances. As it has already been demonstrated both Lewis County and Mr. Green agree that the court ruled on the same issue of whether there was a timely response as both an aggravating and a mitigating factor. Mr. Green is arguing is whether a trial court is allowed by law to find the same issue as both an aggravating and a mitigating factor, in accordance with the *Yousoufian* decision. *Yousoufian v. Office of Ron Sims*, 229 P. 3d 735, 748 (Wash. 2010).

Whether the trial court applied multifactor analysis as intended by the *Yousoufian* court is a conclusion of law. Conclusions of law are reviewed de novo. *Blackburn v. Dept. of Social & Health Serv.*, 375 P. 3d 1076, 1079 (Wash. 2016).

The *Yousoufian* factors arose out of a 2010 Washington State Supreme Court opinion primarily focusing on the considerations to awarding penalties. *Yousoufian v. Office of Ron Sims*, 229 P. 3d 735, 748 (Wash. 2010). The parties, amicus and the Supreme Court agreed that the

Court of Appeals approach of a tiered system based upon pattern jury instructions was insufficient. *Id.* at 745-46. The parties and amicus agreed that a "that a nuanced multifactor approach" would be better suited to determine the complexities that can be found when determining the statutory penalty of a Public Records Act violation. *Id.* at 746. The Washington State Supreme Court developed its own multifactor analysis. *Id.* at 747-48.

The Washington State Supreme Court created a multifactor analysis as a matter of law. Thus, the application and operation of those factors are also an issue of law subject to de novo review. *Blackburn v. Dept. of Social & Health Serv.*, 375 P. 3d 1076, 1079 (Wash. 2016).

2. It is Not Within the Trial Court's Discretion to Apply Contradictory Aggravating and Mitigating Factors

When deciding what the correct standard is to review this issue, it is important to think about the intent and spirit of the aggravating and mitigating factors that compromise a *Yousoufian* analysis. The aggravating and mitigating factors of a *Yousoufian* analysis provide "guidance to trial courts, more predictability to parties, and a framework for meaningful appellate review." *Yousoufian v. Office of Ron Sims*, 229 P. 3d 735, 748 (Wash. 2010).

Because the aggravating factors and mitigating factors are meant as "guidance" for the trial courts, the multifactor analysis inherently limits

some of the trial court's discretion. The common definition of to 'guide' is "to direct, supervise, or influence usually to a particular end." Guide, Merriam-Webster Dictionary (Aug. 08, 2017, 01:38 PM), https://www.merriam-webster.com/dictionary/guide#h2. By definition, if the Washington State Supreme Court is providing direction to the trial courts on how to decide the penalty, then it is influencing the trial court's discretion to a particular end, which has the effect a small limitation on the trial court's discretion.

Contradictions lead to confusion. Permitting trial courts to contradict itself in a written ruling defies common sense. It is a well-established maxim that Washington "the courts will endeavor to administer justice according to the promptings of reason and common sense, which are the cardinal principles of the common law" in the absence of statutory guidance. *In re Parentage of LB*, 122 P. 3d 161, 166 (Wash. 2005) (quoting *Bernot v. Morrison*, 81 Wash. 538, 544 (1914) (citing *Sayward v. Carlson*, 1 Wash. 29, 23 (1890))).

3. Permitting trial courts to apply simultaneous aggravating and mitigating factors violates the purpose of the *Yousoufian* multifactor analysis

Permitting trial courts to apply contradictory aggravating and mitigating factors violates the purpose of the *Yousoufian* multifactor analysis. The purpose of the multifactor analysis is: "provides guidance to

trial courts, more predictability to parties, and a framework for meaningful appellate review." *Yousoufian v. Office of Ron Sims*, 229 P. 3d 735, 748 (Wash. 2010).

To allow a factor to be both an aggravating factor and a mitigating factor, provides arbitrary opinions, and essentially destroys the framework for meaningful appellate review.

As stated in the Mr. Green's opening brief, by definition aggravating and mitigating factors mean contrary things. In law an aggravator works to "elevate[ ] the maximum" penalty. *State v. Langstead*, 228 P. 3d 799, 802 (Wash. Ct. App. 2010) (quoting *State v. Roswell*, 196 P. 3d 705, 707 (Wash. 2008)); accord Aggravated, *Black's Law Dictionary* (8th ed. 2004) (defining aggravated as "made worse or more serious by circumstances"). On the contrary mitigating factors are meant to "merit leniency" of the penalty. *State v. McEnroe*, 333 P. 3d 402, 403 (Wash. 2014); accord Mitigate, *Black's Law Dictionary* (8th ed. 2004) (defining mitigate as "[t]o make less severe or intense").

For this court to allow the same issue to be applied as an aggravating factor as well as mitigating factor, makes the entire multifactor framework meaningless. Aggravating factors serve to heighten the penalty, if the same issue that is applied as an aggravating factor is also applied as a mitigating factor, then the distinction between the two is meaningless.

Furthermore, if there is no difference between an aggravating factor and a mitigating factor then it would put the penalty system into chaos. There could be no meaningful review of the statutory penalty, RCW 42.56.550(4), because the framework designed by the Washington State Supreme Court would be meaningless and arbitrary because the aggravating and mitigating factors would be rendered moot.

4. Conclusion

Allowing the same issue to be used as an aggravating factor as well as a mitigating factor is downright confusing and frustrates the purpose of the Washington State Supreme Court's multifactor analysis. The purpose of an aggravating factor will no longer mean that the agency's increased culpability will increase the statutory penalty, instead it will be meaningless and the multifactor analysis will no longer provide a framework for review, or guidance in the penalty stage.

This Court should adopt Mr. Green's proposed rule, as proposed in Mr. Green's Opening Brief. The suggested rule is that if a trial court finds an issue to be an aggravating factor then that same issue cannot also be used as a mitigating factor. This rule will help protect the integrity of the Washington State Supreme Court's multifactor analysis to provide future meaningful review and guidance.

C. The Trial Court erred as a matter of law when determining the timeframe for the statutory penalty

In Mr. Green's Opening Brief, Mr. Green cites the standard of review for all three arguments as de novo. Appellant's Br. at 6. Lewis County is at best mistaken by claiming that Mr. Green did not assign error to this argument.

1. Strict enforcement of the PRA does not allow non-Public Records Officers to provide documents as a part of litigation

Mr. Green was distinguished amongst requestors because the wrongfully withheld document was voluntarily produced by Agency's attorney as a declaration filed with the Answer. CP at 34-43. To allow a document to be produced pursuant to the Public Records Act, while distinguishing amongst requestors, and produced by a non-Public Records Officer, is not strict enforcement of the Public Records Act because it violates multiple sections of it.

State statute requires agencies to have strict enforcement of the Public Records Act. *Spokane Research Fund v. City of Spokane*, 117 P. 3d 1117, 1123 (Wash. 2005); *Amren v. City of Kalama*, 929 P. 2d 389, 395 (Wash. 1997); *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 140 (1978); *Zink v. City of Mesa*, 166 P. 3d 738, 742 (Wash. Ct. App. 2007). The purpose of the strict enforcement is to "discourage[ ] improper denial of access to public records." *Spokane Research*, 117 P. 3d at 1123.

The Trial Court is not strictly enforcing the Public Records Act when it allows an attorney for the Lewis County Prosecuting Attorney's Office, who is not a Public Records Officer, to respond to a Public Records Request during litigation.

To allow an agency to claim that the time stops for the penalty when Plaintiff is distinguished amongst other requestors by the way he received the documents violates strict enforcement of the Public Records Act. Distinguishing amongst requestors violates RCW 42.56.080.

Lewis County responds to this by saying RCW 42.56.080 cannot nullify agency actions. But, in making that argument, Lewis County misses the point. No one is contesting that Lewis County delivered the wrongfully withheld document in a declaration sent with its Answer. Furthermore, no one is attempting to nullify Lewis County's actions.

Rather, Mr. Green is arguing that the penalty should be increased because Lewis County did not follow strict enforcement of the Public Records Act when providing him the withheld record once the lawsuit commenced.

The record is absent of Lewis County ever admitting that it has a pattern and practice of providing records to requestors, in accordance with the Public Records Act, via court rule CR 5(b)(2)(a). Because Lewis

County does not do this for anyone else, it distinguished Mr. Green amongst requestors.

Lewis County cannot claim that they are complying with the law by breaking the law. That is the reason why Washington Courts have repeatedly stated there needs to be strict enforcement of the Public Records Act.

2. Conclusion

This Court should remand this case back down to the trial court to determine the statutory penalty in accordance with this Court's ruling. The Trial Court needs to determine the statutory penalty in accordance with strict enforcement of the Public Records Act, as well-established case law states.

II. CONCLUSION

This case presents novel arguments of law that warrant an oral argument in front of the Court of Appeals.

For the foregoing reasons, this Court should remand this back to the trial court to make an active determination of attorney's fees based upon Mr. Green's status of prevailing on all issues of merit in front of the court, and it also should be remanded to trial court to determine the correct number of days there was a wrongful withholding because Lewis County distinguished Mr. Green amongst requestors when providing him the

document, violating the Public Records Act strict enforcement provision. This Court should also declare that once an issue is found to be an aggravating factor it cannot also be a mitigating factor.

Respectfully submitted this 17 day of August, 2017.

By: _____

Joseph Thomas, WSBA 49532
Law Office of Joseph Thomas PLLC
14625 SE. 176th St., Apt. N101
Renton, WA 98058
Attorney for Brian Green

Certificate of Service

I declare under penalty of perjury under the laws of the State of Washington that on August 17, 2017, I caused a true and correct copy of this Reply Brief on Respondents by emailing it to its attorney, Eric Eisenberg, by agreement at his email address Eric.Eisenberg@lewiscountywa.gov.

Executed in Renton, Washington,

_____
Joseph Thomas WSBA # 49532

LAW OFFICE OF JOSEPH THOMAS

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